

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WISCONSIN**

---

MATTEW J FRISCHMANN,

Plaintiff,

v.

Case No. 10-CV-376

MICHAEL J. ASTRUE  
Commissioner of the  
Social Security Administration,

Defendant.

---

**ORDER RE: PLAINTIFF'S PETITION FOR  
LEAVE TO PROCEED IN FORMA PAUPERIS**

---

The plaintiff, Michael J. Frischmann, seeks judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner of the Social Security Administration's (Commissioner) decision denying his application for disability and supplemental security income benefits. The plaintiff has filed a petition for leave to proceed in forma pauperis. (Docket #2). The court will grant the petition.

In order to authorize a litigant to proceed in forma pauperis, the court must make two determinations: 1) whether the litigant is unable to pay the costs of commencing the action; and 2) whether the action is frivolous or malicious. 28 U.S.C. § 1915(a) & (e) (2).

The plaintiff's affidavit of indigence indicates that he has no source of. Accordingly, the court concludes that the plaintiff has satisfied the requirements of Section 1915(a) and is unable to pay the costs of commencing this action.

The plaintiff must next demonstrate that his action for judicial review has merit, as required by 28 U.S.C. § 1915(e)(2). Liberally construed, his complaint can be interpreted as alleging that the Commissioner's decision denying his application for disability benefits is not supported by substantial evidence. So construed his complaint sets forth an arguable basis for relief in both law and fact and, therefore, is not frivolous for the purposes of Section 1915(e)(2). See Neitzke v. Williams, 490 U.S. 319, 325 (1989); Denton v. Hernandez, 504 U.S. 25, 31 (1992). Accordingly, the defendant will be called upon to respond to the allegations contained in the plaintiff's complaint.

The Clerk of Court will serve the copy of the complaint, the summons and this order upon the defendant.

**ORDER**

**NOW, THEREFORE, IT IS ORDERED** that, pursuant to 28 U.S.C. § 1915(a), the plaintiff's petition for leave to proceed in forma pauperis be and hereby is **granted**. (Docket #2).

**IT IS FURTHER ORDERED** that the Clerk of Court be and hereby is directed to serve a copy of the complaint, summons and this order upon the defendant pursuant to Fed. R. Civ. P. 4.

Dated at Milwaukee, Wisconsin this 5th day of May, 2010.

BY THE COURT:

s/ Patricia J. Gorence  
PATRICIA J. GORENCE  
United States Magistrate Judge

O:\SS\Frischmann IFP.wpd